Rao Bahadur T. K. Nayar *(Minister for Public Health):* I second it.

Mr. President: The question is that the Cochin Cocoanut Committee Act (Amendment) Bill be taken up and finally passed tomorrow, *i.e.*, Wednesday, 13th August 1947.

Motion put and carried

(5) The Cochin Oil Seeds Committee Bill

Mr. Paul P. Mampilly *(Advocate-General):* I move that the Cochin Oil Seeds Committee Bill be read in Council.

Mr. P. Govinda Menon *(Minister for Food and Education):* I second it.

Mr. President: The question is that the Cochin Oil Seeds Committee Bill be read in Council.

Motion put and carried

Secretary to the Council: The title of the Bill is the Cochin Oil Seeds Committee Bill.

Mr. Paul P. Mampilly *(Advocate-General):* I move that Standing Order 32 may be suspended.

Mr. President: Standing Order 32 is suspended.

Mr. Paul P. Mampilly *(Advocate-General):* I move that the Cochin Oil Seeds Committee Bill be taken into consideration.

Mr. President: The question is that the Cochin Oil Seeds Committee Bill be taken into consideration.

Motion put and carried

The question is that Clauses 2 to 11 stand part of the Bill.

Motipn put and carried

The question is that Clause 1, title and preamble stands part of the Bill.

Motion put and carried

Mr. Paul P. Mampilly *(Advocate-General):* I move that the Cochin Oil Seeds Committee Bill be taken up and finally passed tomorrow.

Mr. President: The question is that the Cochin Oil Seeds Committee Bill be taken up and finally passed tomorrow, Wednesday, 13th August 1947.

Motion put and carried

(6) The Cochin Income-tax Act (Amendment) Bill

Mr. Paul P. Mampilly *(Advocate-General):* Sir, I move that the Cochin Income-tax Act (Amendment) Bill, as modified by the Select Committee, be taken into consideration. Sir, in moving the Bill for taking into consideration I submit that the Select Committee has made certain important changes in the Bill. The important changes that have been effected in the Bill relate to taxation of agricultural income in the Bill as originally framed the general income as well as the agricultural income were clubbed together and taxed as a whole, so that the rates of tax on the agricultural income as well as on general income were as given in the schedule to the Bill—that is the rate was for the first Rs. 1,500 there was no tax, next Rs. 3,500, 9 pies in the rupee and on the next Rs. 5,000, 1 anna and 6 pies in the rupee, and on the next Rs. 5,000 2 annas and 9 pies and on the balance, 4 annas.

Now according to the recommendation of the Select Committee, agricultural income is separated from the general income, and taxed separately. The tax on general income will be as provided for in the original Bill, but as regards agricultural income, they have given a separate schedule and separate rates of taxation are prescribed. That is found on page 14 of the printed Bill. Out of the total income, Rs. 3,000 set apart for the expenditure of the individual or family is deducted and in the case of an impartible estate, deduction given is at the rate of Rs. 250 for each members o. the family subject to a minimum of Rs. 3,000 and a maximum of Rs. 25,000. After deducting hat, on the balance of the income for the first Rs. 1,500 there will be no tax at all. On the next Rs. 3,500 the tax is 6 pies in the rupee, and on the next Rs. 5,000 one anna in the rupee and on every Rs. 5,000 slab above, the rate has been increased by half anna in the rupee till it reaches Rs. 35,000. After Rs. 35,000 the slab has been raised by Rs. 10,000, the rate of tax is 4 annas in the rupee. After that the slab has

LIBRARY ARCHIVES Kerala Legislative Assembly

been raised by Rs. 25,000 and on that slab the tax is five annas in the rupee. After that the slab has been raised by Rs. 30,000. The rate of tax is six annas. After that the slab has been raised byRs. 50,000 and the rate is 7 annas. After that on the balance of total agricultural income the maximum rate of tax will be 8 annas in the rupee. I may also point out that the Committee has not allowed any super-tax on agricultural income. Therefore as far as the agricultural income is concerned, the tax has been reduced to a much lower level than the tax on general income. Another provision made in the case of agricultural income is than while the original Bill provided only for an exemption of Rs. 3,000 out of the total income, the amended Bill has provided that in the case of impartible estates for every member Rs. 250 will be allowed subject to a minimum of Rs. 3,000 and a maximum of Rs. 25,000. The result is that in an impartible family consisting of 20 members they will be getting an exemption of Rs. 5,000. If the family consists of 100 members that family will get an exemption of Rs. 25,000, but the maximum amount of exemption that a family will get is Rs. 25,000.

Mr. M. O. Thomakutty *(Commerce and Industry)*: On a point of information, Sir. Whether it is applicable to the Christian families?

Mr. Paul P. Mampilly *(Advocate-General)*: This is not applicable to Christian families which are not impartible by any law. They can partition their properties. But this is not the case with the Namboodiri families, because even if they want, they cannot partition according to the existing law.

മിസ്റ്റർ എം. ഒ. തോമക്കുട്ടി: ഭാഗിക്കാത്ത ക്രസ്ത്യൻ കുടുംബത്തിനു് ഇതു ബാധിക്കുമോ? Will not any agreement or contract do?

Mr. Paul P. Mampilly *(Advocate-General)*: If there has been a trust, this provision may apply to that if considered as a family. But merely because a family has not been devided, this provision will not apply.

മിസ്റ്റർ എം. ഒ. തോമക്കുട്ടി: ഒരു ക്രസ്ത്യൻ ഫാമിലി വിഭജിക്കപ്പെടാതിരിക്കുന്നിടത്തോളം കാലം ഈ നിയമം അതിനു ബാധകമാകുമോ?

Mr. Paul P. Mampilly *(Advocate-General)*: This provision will not apply to that family.

മിസ്റ്റർ എം. ഒ. തോമക്കുട്ടി: പൂർവ്വികന്മാരുടെ വസ്തു വീതംപോകരുതു് എന്ന ഉദ്ദേശത്തോടുകൂടി ഒരു ട്രസ്റ്റിയുണ്ടാക്കി ആദായംമാത്രം എടുക്കുകയാണെങ്കിൽ ആ ആദായത്തിനു നികുതി ചുമത്തുമോ?

Mr. Paul P. Mampilly *(Advocate-General)*: If a trust has been created by which that property cannot be partitioned, then this provision may apply if the assessee is treated as an mpartible family.

Mr. M. O. Thomakutty *(Commerce and Industry)*: That is right.

Mr. P. Kumaran Ezhuthassan *(Vadakkancheri)*: Are you sure of that? Is the Hon'ble Law Member sure of his present answer about such Christian families?

Mr. Paul P. Mampilly *(Advocate-General)*: This is where the law provides that the property belonging to a family cannot be divided. Where a Trust has been constituted and the provision in the Trust is that the properties cannot be divided, that remains impartible. If it is a Trust, it will be taxed under clause 4.

Mr. P. Kumaran Ezhuthassan *(Vadakkancheri)*: That has to be dealt with under the provisions and not under this Rs. 250.

Mr. Paul P. Mampilly *(Advocate-General)*: Under what section it can be taxed is a different matter. Whether that the properties of the trust can be divided is the question put to me.

Mr. P. Kumaran Ezhuthassan *(Vadakkancheri)*: He asked whether the Rs. 250 now provided in the amendment—how will it apply to Christian families if they remain undivided. That is the point of the question and he will be carried away by your answer.

Mr. Paul P Mampilly *(Advocate-General)*: The trust will be taxed according to the provisions of clause 4.

If it comes under clause 4, that trust will be taxed according to the provisions contained in the clause.

Mr. M. O. Thomakutty *(Commerce and Industry)*: With regard to trusts?

LIBRARY ARCHIVES Kerala Legislative Assembly

Mr. Paul P. Mampilly *(Advocate-General):* Yes.

Mr. P. Govinda Menon *(Minister for Food and Education):* May I say, now that the point has been raised, that in the eye of law there is nothing known as a Christian family because it is only in the social sense that we have Christian families. In the eye of law, the property owned by a Christian is his own property and his successors or heirs will get that property only if it is assigned to them or if it is willed or inherited after the death of the owner; so that, the confusion will not arise. If there is an impartible family of a Christian either on account of custom or on account of the law, then the wording of the Billl is wide enough to cover such cases also.

മിസ്റ്റർ എം. ഒ. തോമക്കുട്ടി: ബഹുമാനപ്പെട്ട വിദ്യാഭ്യാസമന്ത്രി പറഞ്ഞ തിനെസംബന്ധിച്ച് എനിക്കു ചോദിക്കുവാനുള്ളതു്, പൂർവ്വികമായിട്ടുള്ള സ്വത്തു് ഭോഗിക്കുവാൻ പാടില്ലെന്നു് നിശ്ചയം ചെയ്തിട്ടുള്ളവരുണ്ടു്. അങ്ങിനെയുള്ള കുടുംബങ്ങളിലെ അംഗങ്ങൾക്കു് ആ നിലത്തിന്റെ ആദായം പറ്റാൻ മാത്രമേ അവകാശമുള്ളു. അങ്ങിനെയുള്ള ഒരു കുടുംബത്തിലെ ഒരു അംഗത്തിനു് ഡി ഓ കെ. വീതം ആ സ്വത്തിൽനിന്നു് ആദായം കിട്ടുന്നതാണെങ്കിൽ ഇതിൽനിന്നു് ഒഴിവാക്കുമോ, അതോ അവക്കും നികുതി ചുമത്തുമോ?

Mr. P. Govinda Menon *(Minister for Food and Education):* I can only say that if according to law that is an impartible family, then this clause will apply.

മിസ്റ്റർ എം. ഒ. തോമക്കുട്ടി: അഗ്രിക്കൾച്ചറൽ ഇൻകത്തിന്മേൽ മാത്രമല്ലെ ഈ നിയമം ബാധിക്കുകയുള്ളു. അതോ മറ്റുതരത്തിലുള്ള ആദായത്തിന്മേലും ബാധിക്കുമോ?

Mr. Paul P. Mampilly *(Advocate-General):* No. Another modification that has been effected by the Select Committee is that in the case of super-tax, the original rate has been reduced. Originally the maximum rate was 12 annas. Now the maximum has been reduced to 8 annas in the rupee. These are the main modifications that have been made by the Select committee.

Mr. P. Govinda Menon *(Minister for Food and Education):* I second the motion. I may point out that when a report of the Select Committee is presented, the provision that is applicable is at page 36, paragraph 93, which reads "The report of the Select Committee on a Bill shall be presented to the Council by the member in-charge of the Bill, who shall, if he makes any remarks, confine himself to a brief statement of facts". As I understand it, there is no scope for a discussion on this motion. Hereafter clauses will be taken up and then only there is scope for speech.

Mr. President: Which is the rule pointed out?

Mr. P. Govinda Menon *(Minister for Food and Education):* On page 36, paragraph 93.

Mr. M. O. Thomakutty *(Commerce and Industry):* I wish to have a general discussion on this.

Mr. President: That stage is over.

Mr. P. Kumaran Ezhuthassan *(Vadakkancheri):* Sir, with regard to one paragraph in the Select Committee Report, I wish to draw the attention of the Hon'ble House to some omission there. In paragraph 6 of the Report, it is stated "in view of the fact that the agricultural income has been brought within the provision of the Income-tax Act, the question of reducing Land Revenue should be considered by Government". But it is not the whole of the recommendation of the Select Committee. The Committee thought it necessary to make a recommendation that in view of the fact that the agricultural income has been brought in the purview of the Income-tax Act the question of reducing Land Revenue by 50 per cent should be considered by Government.

Mr. M. K. Raja *(Mulankunnathukavu):* The Hon'ble Member also has signed it.

Mr. P. Kumaran Ezhuthassan *(Vadakkancheri):* I did sign the report. Did I ever say that I didn't sign it?

Mr. P. Govinda Menon *(Minister for Food and Education):* The original signed by the Hon'ble Member is here.

Mr. P. Kumaran Ezhuthassan *(Vadakkancheri):* Our recommendation was that the revenue may be reduced by 50 per cent. I wanted simply to point out the omission.

മിസ്റ്റർ എം. ഒ. തോമക്കുട്ടി: സർ, ഈ ബിൽ കൃഷകന്മാരെമാത്രം ബാധിക്കുന്ന ഒരു ബില്ലായതുകൊണ്ടു് ഇതിനെപ്പറ്റി രണ്ടുവാക്കു് പറയേണ്ടതു് അത്യാവശ്യമാണു്. ഈ നി

LIBRARY ARCHIVES Kerala Legislative Assembly

യ്മം മറ്റു വിധത്തിൽ ആദായം കിട്ടുന്നവക്കും ബാധകമായിരിക്കണമെന്നേ ഞാൻ ആവശ്യപ്പെടുന്നുള്ളൂ.

Mr. President: What is your point?

മിസ്റ്റർ എം. ഒ. തോമക്കുട്ടി: The Member for Commerce was not included in the Select Committee. I want to protest against this action of the present Responsible Government. ഇതിൽ വളരെ കാര്യങ്ങളും പറഞ്ഞു മനസ്സിലാക്കേണ്ടതുണ്ട്. ഇതു് കർഷകന്മാരുടെ രക്ഷയെ മാത്രം ഉദ്ദേശിച്ചു കൊണ്ടുവന്നിട്ടുള്ള ഒരു സിലക്ട് കമ്മറിയുടെ ബില്ലാണു്. ഈ രാജ്യത്തിൽ വാണിജ്യ വ്യവസായങ്ങളും ഉണ്ടാക്കുവാൻ പാടില്ലെന്നുള്ള ഉദ്ദേശത്തോടുകൂടിയാണു് ഇതു് അവർ കൊണ്ടുവന്നിട്ടുള്ളതു്. അതുകൊണ്ടാണു് ഇതിൽ ഇൻകംടാക്സ്, സൂപ്പർ ടാക്സ് മുതലായതിനു ക്രമത്തിലധികം നികുതി കൂട്ടിയിട്ടുള്ളതു്. ആ കാര്യം പറയുന്നതിനു വാണിജ്യ വ്യവസായ മെമ്പറെ ഈ കമ്മിറ്റിയിൽ ഉൾകൊള്ളിച്ചിട്ടില്ലെന്നുള്ള സത്യാവസ്ഥ ഇവിടെ പ്രസ്താവിക്കാതെ തരമില്ല.

Mr. President: What is it that the Hon'ble Member wants?

മിസ്റ്റർ എം. ഒ. തോമക്കുട്ടി: ഈ ബിൽ കൊണ്ടുവരപ്പെട്ടിട്ടുള്ളതിൽ ജനകീയ മന്ത്രിയുടെ ഔചിത്യമില്ലായ്മയേയും, വിവേകമില്ലായ്മയേയും, വ്യക്തിവിദ്വേഷങ്ങളേയും ചൂണ്ടികാണിക്കുവാനാണു് ഞാൻ ഇതിനെപ്പറ്റി പറയുവാൻ ഉദ്ദേശിക്കുന്നതു്.

Mr. President: So, the Hon'ble Member wants a general discussion of the Bill.

Mr. M. O. Thomakutty *(Commerce and Industry)*: Yes, Sir.

Mr. President: The Hon'ble Member must be aware of the rules as a member of the House. The rules do not permit a general discussion at this stage, and it is not within my power to allow the Hon'ble Member to have a general discussion at this stage.

മിസ്റ്റർ എം. ഒ. തോമക്കുട്ടി: ഞാൻ പറയുന്നതു്.....

Mr. President Order, order. The Hon'ble Member should understand that there are rules which strictly prescribe the methods by which these matters are to be dealt with. If the Hon'ble Member wishes to make general observations, as I said the stage for that has passed. What can be done now is, when the Bill is considered clause by clause the Hon'ble Member may deal with them in so far as the rules permit.

Mr. Puthur Achyuta Menon *(Kattur)*: The Select Committee was not a nomination by the Minister, it was elected by this House.

Mr. President: Now, the Hon'ble Member protests against his non-inclusion. If it is on these lines that legislation goes on, I don't know what will happen.

മിസ്റ്റർ എം. ഒ. തോമക്കുട്ടി: ഞാൻ പറയുന്നതു് ഒരു വിദേശി ദിവാൻ പ്രസിഡണ്ടു് ഉണ്ടായിരുന്ന കാലത്തു് ഇന്നുള്ള ഉത്തരവാദഭരണം ഇല്ലാഞ്ഞിട്ടും കഴിഞ്ഞ കൊല്ലത്തിൽ ഇൻകംടാക്സ് ബിൽ സിലക്ട് കമ്മിറ്റിക്കു് അയച്ചപ്പോൾ കോമേർസു് മെമ്പർ ഇവിടെയില്ലാതിരുന്നിട്ടും, ആ കമ്മറിയിൽ പെടുത്തുകയുണ്ടായി. എന്നാൽ ഇപ്പോൾ ഈ കൌൺസിലിനു് ഒരു ഇലക്ടഡ് പ്രസിഡണ്ടും കൂടുതൽ ഉത്തരവാദഭരണവും ഉണ്ടായിരുന്നിട്ടുപോലും ഈ അമൻറമെൻറ് ബില്ലു് സിലക്ട് കമ്മിറ്റിക്കു് അയച്ചപ്പോൾ അതിൽ കോമേർസു് മെമ്പറെ ഉൾപ്പെടുത്തിയില്ലല്ലോയെന്നാണു് ഞാൻ പറയുന്നതു്. ആയു് വ്യക്തി വിദ്വേഷപരമായുകൊണ്ടാണൊ?

മിസ്റ്റർ പ്രസിഡണ്ടു്: അതിനു് എന്തുചെയ്യണമെന്നാണു് പറയുന്നതു്? He protests aganist the non-inclusion of the Commerce Member.

Mr. M. O. Thomakutty *(Commerce and Industry)*: Why not include my name on the Committee?

Mr. President: Why it was not included, I don't know. The Committee has already made its report.

Mr. M. O. Thomakutty *(Commerce and Industry)*: The committee has committed a blunder.

Mr. President: Does the Hon'ble Member say that the committee should be re-constituted?

Mr. M. O. Thomakutty *(Commerce and Industry)*: I would say that the committee must be re-constituted.

LIBRARY ARCHIVES Kerala Legislative Assembly

Mr. President : To such suggestions, there is no answer. The Committee has been appointed and it reported on the Bill. According to the Rules, we have now to consider the Report and I cannot go beyond that. The question now before the House is that the Bill as modified by the Select Committee be taken into consideration.

Motion put and carried

Mr. P. Kumaran Ezhuthassan *(Vadakkancheri):* Sir, Are no observations permitted at this stage ? Or are we to confine to the clause, to the coma, full stop, etc. Or can we make general remarks ?

Mr. P. Govinda Menon *(Minister for Food and Education):* We can consider it clause by clause.

Mr. P. Kumaran Ezhuthassan *(Vadakkancheri):* Sir, I am surprised at the change of front. Are we allowed to make general observations while taking each clause ?

Mr. P. Govinda Menon *(Minister for Food and Education):* Under what rule ?

Mr. P. Kumaran Ezhuthassan *(Vadakkancheri):* Under the Legislative Council Standing Orders.

Mr. P. Govinda Menon *(Minister for Food and Education):* What does it say ?

Mr. P. Kumaran Ezhuthassan *(Vadakkancheri):* Sir, I do not want to voice forth my observations unless it is provided for in the Rules. If the Chair agrees with me, I will do so. If the Minister asks me about the rules, I will simply refer him to the book. I am not here to teach him.

Mr. President : The Hon'ble Member has been making observations as a member of the Select Committee. Whoever objected to that ?

Mr. P. Govinda Menon *(Minister for Food and Education):* With your leave, Sir, I may say that the motion that the Bill as amended by the Select Committee may be taken up for consideration has been made and passed. The next stage according the rules is laid down in rule 95 at page 37—" when a motion has been agreed to by the Council that a Bill be taken into consideration, any member may propose an amendment of such Bill ". We are at that stage now, Sir.

Mr. P. Kumaran Ezhuthassan *(Vadakkancheri):* I must inform the Hon'ble Member who is the Minister .....

Mr. President : The Hon'ble Member will be called upon.

Mr. P. Kumaran Ezhuthassan *(Vadakkancheri):* Sir, I must inform the Hon'ble Minister who says he is the Chief Minister, with his parliamentary experience ranging for a long period that there are not two independent things like the presenting of the report of the Select Committee and moving for consideration. Authorities are ample and plentiful in this behalf both under May's Parliamentary Procedure, under the Central Legislative Assembly Rulings and Provincial Rules and also ours, Sir.

Mr. President : Therefore ?

Mr. P. Kumaran Ezhuthassan *(Vadakkancheri):* Therefore, Sir, the observation made by my hon'ble friend that clauses will be considered and amendments alone can be made is not correct. Through his interference, discussion at this stage is stifled. It is a method, prearranged method of stifling discussion on legislative measures for getting money for spending on extravagant things.

Mr. President : The Hon'ble Member will resume his seat. I expect more helpful attitude from the Hon'ble Members of the House.

Mr. P. Kumaran Ezhuthassan *(Vadakkancheri):* Inclusive of the Treasury Benches; Sir.

Mr. President : Including the President also. The Hon'ble Members are aware of the rules. Some of the Hon'ble Members perhaps know the rules better than the President himself. Therefore, the stage at which the Bill is that the bill be taken into consideration *i.e.*, the Bill as reported by the Select Committee be taken into consideration. That proposition has been put to the vote of the House. There, we are. What is the next stage? The next stage prescribed is that clause after clause will be put or certain clauses together be put. If there are amendments to any clause they will be put separately. The Hon'ble Members are aware that this has been the long-standing practice of this House. I do not see why so much fuss is made about this matter. We are going to the next stage of this Bill strictly according to the Rules.

LIBRARY ARCHIVES Kerala Legislative Assembly

Mr. P Kumaran Ezuhuthassan *(Vadakkancheri)*: Can I make an observation, Sir?

Mr. President: What is the Hon'ble Member's observation?

Mr. P. Kumaran Ezhuthassan *(Vadakkancheri)*: My observation Sir, is that the position taken up, *viz.*, that the Bill be taken into consideration, that motion has been passed as also coupled with the fact that when attempt at making an observation on that motion was made, it was stated that the opportunity is at the next stage, I wish to point out and therefore I called it stifling of discussion initiated by the Treasury Benches.

Mr. President: I am not of the opinion that there has been an attempt at stifling of discussion.

Mr. P. Kumaran Ezhuthassan *(Vadakkancheri)*: Yes, Sir, You are the master here. We have to obey.

Mr. President: Not that I am the master. The clauses will be taken up now. There is an amendment to clause 4.

According to the practice, clauses 2 and 3 will be put now. The amendment will be moved when clause 4 is taken up.

Clauses 2 and 3 put and carried

Mrs. T. Francis *(Ernakulam-Women)*: Sir, I move the following amendment to the Cochin Income-tax Act (Amendment) Bill as modified by the Select Committee "Clause 4—delete the clause". Sir, I have said more than sufficient the other day while opposing the Bill in general and particularly this clause. Sir, before taxing the religious and charitable institutions, the Government ought to have had definite plans to provide asylums for the poor, for the dumb, for the blind, and for the discarded childrn, I mean, for whom these institutions, especially, are doing their best to receive them and to educate them and to convert them into proper citizens. These religious institutions are striving their utmost to feed them and to feed their brains also by giving them proper education. But the Government have not done anything or planned anything or have got any intention to house them. It is not what the Government mean to do. But the Government want to tax them at this period. This is not the time I say you could have waited and could have made out a plan before you taxed these institutions. You say that you are only going to tax the surplus and a certain period to accumulate them and if by the time it has not used it, then only you are going to tax them. But these are all hard things. These people who have left their homes and decided to live amongst the poor to work for the poor and to devote all their time, striving, begging and borrowing, working and gathering some money to feed all these poor and render good service to them are going to be taxed. Sir, it is not time, unless the Government have plans to do all these things. Government have no definite plan. So I say this is not the time. So I appeal to the Government to delete this clause and leave the religous institutions as at present. I remember reading the other day what Dr. John Mathai, Finance Member of the Indian Domination was saying, "the first duty of the Government is to end the poverty of the land". How are you going to eradicate poverty from Cochin? What has the Cochin Government done? You have only created a Vagrancy Act, a useless Act, and not doing anything. There are people begging. It is not being properly worked. So you have not done your duty on your part and after doing it, you can tax them. This is not the time. On this ground, I say that clause 4 may be deleted. So I request the Government to consider that very seriously and take away that clause from the Bill.

Mr. S. S. Koder *(Nominated)*: Sir, I rise to second the amendment. The action of the Government in taxing the income of religious and charitable institutions must be resisted and this ungodly act condemned. As I stated before, the argument of the Hon'ble Minister that only the surplus will be taxed is side-tracking the issue. No income of charitable institutions should be subjected to any tax. I may draw the attention of the Hon'ble Minister that in the States of America if a man donates any amount to charitable institution, that amount is deducted from his income for purposes of income tax. So I think the Government will think twice before introducing this measure.

മിസ്റ്റർ എം. ഒ. തോമക്കുട്ടി: ഇത്തരം ധർമ്മസ്ഥാപനങ്ങളിൽനിന്നു് ഗവൺമെണ്ടി ലേക്കു് ആദായ പിരിവു് എടുക്കുകയെന്നുള്ളതു് കഷ്ടമാണെന്നാണു് എന്റെ വിശ്വാസം. അതുകൊണ്ടു് ആ ഭേദഗതി മാറ്റണമെന്നാണു് എന്റെ അഭിപ്രായം.

Dr. S. S. Rao *(Nominated)*: Sir, I feel that I have to support this amendment. The Cochin Chamber of Commerce being an institution of a peculiar nature, which does not fall

LIBRARY ARCHIVES Kerala Legislative Assembly

[Dr. S. S. Rao]

within the provisions of the income-tax enactment, they have been taxed, they have raised an emphatic objection and the matter has not yet been decided. Anyway, in view of the fact that such religious and charitable institutions are not being taxed anywhere I feel that this amendment will receive its due consideration.

Mr. P. Govinda Menon (*Minister for Food and Education*): Sir, Government appreciate very much the anxiety of those Members of this House who spoke in favour of the amendment for the deletion of the clause before this House. But I wish at this stage, Sir, to respectfully submit that nothing is attempted in this Bill to in any way injure the religious or charitable institutions in our country. A reference to the existing provision of the Income-tax Act and the amendment will make it very clear. Under the existing Act, section 5, sub-section (3) (1) exemption is given as follows:—'any income derived from property held under trust or other legal obligation wholly for religious or charitable purposes and in the case of property so held in part only for such purposes, the income applied or finally set apart for application 'thereto' so that in the existing clause the charitable and religious institutions are classified into two categories, those whose income have been set apart wholly for religious and charitable purposes and those where part of the income alone is so set apart. With respect to the second category of institutions, there is the existing provision that the income which is not so set apart is liable to be taxed under the existing Act. I shall summarise the effect of the amendment proposed. I don't want to read the several clauses. I can say that the effect of the amendment as summarised will be as follows: If an institution or the manager of an institution proves that there is a legal obligation to apply the income for religious or charitable purposes and if it is further proved that there has been actual application of that income in that direction, those institutions will get the exemption. And a reference to page 6 of the Bill before the House will go to show that even in cases where in one particular year the income is not so used, the income-tax authorities will not go and take tax from that income, provided that the income so set apart not actually applied for the the purpose for which it was set apart within two years from the end of the year in which it was set apart or within such extended time as may be allowed by the Commissioner of Income-tax in any special case. Sir, this will go to show that an attempt is made to tax only such categories of income which. though set apart for religious or charitable purposes has not been spent for that purpose, not only in the year of accrual, but also for two subsequent years. And even in such cases, the income-tax Commissioner is clothed with authority to give an extension. So that, Sir to say that this amendment is intended to cut at the attempts of institutions to carry on their religious and charitable activities, is wrong. Because, if an institution proves that the income is set apart for a religious or charitable purpose firstly and that income has been so actually applied, then there is no taxation. Even if it is so applied and if it is applied within two years from the date of accrual, even then there is no taxation and in extreme cases, if it has not been applied for the religious or charitable purposes for which it is set apart even within those two years, the Income-tax Commissioner is clothed with sufficient authority to give an exemption. Therefore, Sir here is a case where all legitimate activities are safeguarded and only if there is income unspent for purposes for which it is ear-marked not only in the year of accrual, but also in two subsequent years, only in such cases the income-tax authorities subject such income to taxation. Under these circumstances, I must again respectfully submit to this House that the fear and anxiety exhibited by certain members in this connection are unfounded. Government have made ample provision and the Select Committee consisting, as it did, of no less than 13 members of this House which went through the several aspects of this matter have come to the unanimous conclusion that the safeguards provided in the Bill will be sufficient. The one distinguishing feature of the Select Committee Report is that although there were various sections of this House represented in the Select Committee, that Select Committee made a unanimous report which is before us and under these circumstances I will request the House to unanimously vote for the clause and I would request the Hon'ble Member who moved this amendment to withdraw that amendment.

Mr. M. O. Thomakutty (*Commerce and Industry*): Suppose the institutions incur a loss after three years, will the Government refund the amount received as income-tax?

Mr. P. Govinda Menon (*Minister for Food and Education*): That question can be put up by an industrialist also. It is well known that income-tax is collected in years where there is income and when there is a loss, it is never refunded.

LIBRARY ARCHIVES Kerala Legislative Assembly

Mr. S. S. Koder *(Nominated):* If the surplus money is set apart for constructing buildings or renovating or improving the buildings that exist, will that amount be subjected to this tax?

Mr. P. Govinda Menon *(Minister for Food and Education):* It will depend upon the question whether the application of the money was for the purposes for which the trust has been made. If it can be proved—I cannot speak authoritatively now, it is finally to be decided by the Court which is to decide it—if it is proved that in so spending the money the institution has spent it for the purposes of the trust, then certainly you will get exemption.

Mr. M. O. Thomakutty *(Commerce and Industry):* If the trust is for conducting a school, will it get exemption?

Mr. P. Govinda Menon *(Minister for Food and Education):* Certainly, if the income of the institution is by law or by custom intended for running a school and if it is so utilised, certainly there will be no tax.

Mr. M. O. Thomakutty *(Commerce and Industry):* What all items are included in these categories?

Mr. P. Govinda Menon *(Minister for Food and Education):* That is a matter which has to be decided in each case. If the instrument to which the trust is created will lay down the purposes of the trust, and in certain cases where there is no instrument, either by custom, usage or other surrounding circumstances, you can come to the conclusion what the objects of the trust are.

Mr. S. S. Koder *(Nominated):* Will this apply to the Muslim Wakf Fund?

Mr. P. Govinda Menon *(Minister for Food and Education):* Certainly. Even today under the law as amended, the income from Wakf is taxed, because that is a peculiar type of institution, partly for religious and charitable purposes and partly otherwise.

മിസിസ്സ് ടി. ഫ്രാൻസിസ്സ്: സർ, ഈ അമൻഡുമെൻറിന്റെ ഉദ്ദേശം ഇവിടെ ഇതിനു് സമയമായിട്ടില്ലെന്നുള്ളതു് ധരിപ്പിക്കുവാൻ വേണ്ടിയാണു്. ഞാൻ ഈ അമൻഡുമെൻറ കൊണ്ടുവരാതെതന്നെ ഇതിനു വേണ്ടതു് ചെയ്യേണ്ടതു് ഗവൺമെണ്ടിന്റെ ചുമതലയായിരുന്നു. എന്നാൽ അതു് ചെയ്തില്ല. വഴിയിൽ കിടക്കുന്ന സാധുക്കളെ കൊണ്ടുപോയി സംരക്ഷിക്കുന്നതുപോലെ ഗവൺമെണ്ടിനും ചെയ്യാമായിരുന്നു. അതൊന്നും ചെയ്യാതെ ഈ സ്ഥാപനങ്ങൾക്കൊക്കെ ടാക്സ് ചുമത്തുകയാണു് ചെയ്യുന്നതു്. ഇങ്ങിനെ ഒരു ടാക്സ് ചുമത്തുന്ന കാര്യത്തെപ്പറ്റി മുൻകൂട്ടി യാതൊരു അറിവും കൊടുക്കാതെയാണു് ചെയ്തിട്ടുള്ളതു്. അതുകൊണ്ടാണു് ഞാൻ ഈ ഭേദഗതി കൊണ്ടുവന്നതു്. ഇതു് പിൻവലിക്കാതെയിരുന്നതുകൊണ്ടു് പ്രയോജനമില്ല. നിങ്ങളുടെ പാർട്ടിയുടെ ബലംകൊണ്ടു് ഇതു പാസ്സാക്കാൻ സാധിക്കുമെന്നു് എനിക്കറിയാം. അതുകൊണ്ടു് ഞാൻ ഈ അമൻഡുമെൻറു് പിൻവലിച്ചുകൊള്ളുന്നു.

Motion, by leave, withdrawn

Clauses 4 to 18 put and carried

Clause 1, title and preamble put and carried

Mr. Paul P. Mampilly *(Advocate-General):* I move that the Bill may be taken up and finally passed tomorrow.

Mr. P. Govinda Menon *(Minister for Food and Education):* I second it.

Mr. P. Kumaran Ezhuthassan *(Vadakkancheri):* May I make a suggestion Sir,

Mr President: Yes.

Mr. P. Kumaran Ezhuthassan *(Vadakkancheri):* Now that there will be a meeting at 11 O' clock on 14th August, why not the Government business be done after the purposes for which the meeting is held are over. Because, tomorrow half a dozen Bills are to be taken into consideration for the third reading. It is a deliberate encroachment upon the single day of 3½ hours alone allotted out of a sitting of 14 days budget session to non-official business. I object to any encroachment being made upon tomorrow's non-official time in the interests and on the rights of the non-official members of this House, whether they belong to the Treasury Benches or to the Opposition Benches or other groups. Therefore, at this stage, I suggest that instead of having it put down for tomorrow, it may well be considered whether it could not be put down to the day after, *i. e.* 14th August.

LIBRARY ARCHIVES Kerala Legislative Assembly

Mr. M. K. Raja *(Mulakunnathukavu):* May I know whether it is not going to be a special sitting?

Mr. President: According to the command of His Highness, it is a special sitting, because the wording here is 'it is arranged..... A special sitting of the House may therefore be held."

Mr. M. K. Raja *(Mulankunnathukavu):* In that case, there is no scope for taking up any other subject.

Mr. P. Govinda Menon *(Minister for Food and Education):* I submit, Sir, that it may not be proper, with due deference to what my Hon'ble friend from Vadakkancheri has said. I fully appreciate his anxiety to have no encroachment upon the non-official day fixed for tomorrow. I must respectfully submit that it is inappropriate that this should be discussed on that day.

Mr. P. Kumaran Ezhuthassan *(Vadakkancheri):* I was only making a suggestion. Sir, when an inroad is made, actually I know how to tackle it.

Mr. President: What is the motion before the House?

Mr. Paul P. Mampilly *(Advocate-General):* The motion before the House is that this Bill may be taken up and finally passed tomorrow.

Mr. P. Kumaran Ezhuthassan *(Vadakkancheri):* I oppose the motion, Sir.

Mr. President: The Hon'ble Member will oppose, with reasons.

Mr. P. Kumaran Ezhuthassan *(Vadakkancheri):* Sir, the motion made by the Hon'ble Member for Law that this Bill be taken up and finally passed tomorrow is objected to by me as I find, Sir, that it is an inroad, an avoidable inroad upon the rights of the non-official members of this House to whom a day particular has been allotted for doing a lot of business—as many as 215 resolutions and one important Bill, unfortunately standing in my name, the Compulsory Primary Education Bill which ought to have been passed years ago—and another Bill moved by Hon'ble Member Mr. K. T. Achuthan on which I have tabled a page-long amendment on very important things. Therefore, hardly enough time for doing this is left over. Therefore, any slightest inroad even to the extent of a second is a matter which should be protested and voted down by any member of this House who has got any pretentions to be the representative of the public of Cochin.

Mr. President: The question is that the Cochin Income-tax Act Amendment Bill be taken up and finally passed tomorrow, Wednesday, the 13th.

Motion put and carried

Mr. P. Kumaran Ezhuthassan *(Vadakkancheri):* A poll, Sir.

Mr. President: I think it is an abuse of the privilege of the House to demand a poll when it is so clear.

Mr. P. Kumaran Ezhuthassan *(Vadakkancheri):* Where is the clarity, Sir? If it is the sound, mine was the bigger. It is for taking the number on either side that a poll is demanded. If the volume of voice is the test, then the volume of "no" was the bigger.

Mr. President: If the Hon'ble Member insists on having a poll, let him have it.

Mr. P. Kumaran Ezhuthassan *(Vadakkancheri):* Sir, I can only point out the parliamentary procedure.

Mr. President: If this is the parliamentary procedure, then save us from such a procedure. If the Hon'ble Member insists upon a poll, alright, he can have it.

Mr. P. Kumaran Ezhuthassan *(Vadakkancheri):* Sir, I demand a poll. I do not insist, I demand a poll, which is my right.

Mr. President: Yes.

Ayes—25

Messrs.	Messrs.
1. P. A. Mohamed Ashroff	4. P. K. Dewer
2. K. H. Sulaiman	5. K. K. Kannan
3. Rao Bahadur T. S. Narayana Ayyar	6. K. S. Panicker
	7. R. S. Thevanna Koundan

LIBRARY ARCHIVES Kerala Legislative Assembly

8. K. T. Achuthan
9. M. K. Verghese
10. P. Narayana Menon
11. M. I. Paul
12. M. K. Raja
13. P. T. Jacob
14. P. K. Paul
15. P. Sankara Menon
16. Puthur Achutha Menon
17. C. S. Panicker
18. P. Mani
19. Paul P. Mampilli
20. Rao Sahib A. Madhava Prabhu
21. K. S. Raghavan
22. K. Govinda Menon
23. Rao Sahib K. Ayyappan
24. Rao Bahadur T. K. Nayar
25. P. Govinda Menon

Noes—1

1. Mr. P. Kumaran Ezhuthassan

Mr. President: The motion is carried by 25 voting for and 1 against.

Mr. P. Kumaran Ezhuthassan *(Vadakkancheri):* But, Sir, this in a Council of 53 members.

Mr. President: The Bill will be taken up and finally passed tomorrow.

7. The Cochin Criminal Law (Amendment) Bill

Rao Sahib A. Madhava Prabhu *(Chief Secretary to Government):* Sir, I beg to move that the Cochin Criminal Law Amendment Bill be read in Council.

Rao Bahadur T. K. Nayar *(Minister for Public Health):* I second it.

Motion put and carried

Secretary to the Council: The title of the Bill is The Cochin Criminal Law Amendment Bill.

Mr. P. Kumaran Ezhuthassan *(Vadakkancheri):* Are you explaining the objects?

Rao Sahib A. Madhava Prabhu *(Chief Secretary to Government):* Sir, I don't want to speak in detail because this is a matter which has been discussed in detail here when questions and answers were put, and it was not merely answering questions that was done at that time. There were so many other things, such as explaining the position of the Government the necessity for the Bill, the action that was taken, all those things were discussed here, explained here. Anyway, since it is stated that a detailed discussion is necessary, I shall try to briefly state what the provisions of the Bill are. Sections 1 to 11 of the Bill are merely a reproduction of the lapsed Criminal Law Amendment Act, XVI of 1119 and are based upon sections 1 to 15 of the Indian Criminal Law Amendment Act, XIV of 1908 which is still in force in British India. Now with regard to each section, the first section deals with the extent and commencement, the second deals with definitions, the third, power to declare associations unlawful, fourth, the consequences of a person continuing to be a member of an association which is declared unlawful. The other sections are consequential provisions with reference to what follows when an association is declared unlawful, its property, the place where it is being continued, and all that. That is up to and inclusive of section 9. Then section 10 deals with the jurisdiction being barred. Then, section 11 deals with continuance of the association which has been declared unlawful. That finishes one set of the provisions. That is with reference to associations, its properties, its continuance, the place where it is held and its activities. Then, we come to the next series of provisions—section 12 relating to newspapers, books and other documents which are being printed and circulated having the same object in view. Section 13 relates to searches and seizure of such books, newspapers, etc. Section 14 relates to packages coming from outside and circulation inside the State by post or anchal or otherwise being forfeited and being detained and forfeited. Section 15 is also the same. Section 16 is a new section which is not in the Proclamation that was promulgated. That is with reference to the censorship. Therefore, 12 to 15 relate to printing, and publication of newspapers or other documents or books containing such objectionable matter. Then comes section 16. Section 16 stands separately by itself. It was not found in the Proclamation that was promulgated on this subject. That takes in power for censorship. That is, it gives power to Government to address newspapers not to publish certain things or submit to the Government certain classes of literature before they are published in their books or in their newspapers. That is the power given under section 16, clauses *a & b*. One of these sections prescribes that before the thing is published, it must be submitted to Government and what can be published is only what is allowed by the Government to be published, so that the mischief that is intended may not be worked. The mischief is sought to be prevented. If that is done,

LIBRARY ARCHIVES Kerala Legislative Assembly

2.	A. MADHAVA PRABHU,	Chief Secretary to Government, Member	
3.	PAUL, P. MAMPILLY,	Advocate-General, ,,	(Signed)
4	M. K. RAJA	,,	,,
5.	K. T. ACHUTHAN	,,	,,
6.	M. K. VERGHESE	,,	,,
7.	R. S. THEVANNA KOUNDAN	,,	,,
8.	C. N. ITTIRAVI NAMBUDIRI	,,	,,
9.	T. V. KOCHUVAREED	,,	,,
10.	P. K. PAUL	,,	,,
11.	P. KUMARAN EZHUTHASSAN	,,	,,
12.	P. NARAYANA MENON	,,	,,
13.	P. A. MOHAMMAD ASHROF	,,	,,

APPENDIX XI

THE COCHIN INCOME-TAX ACT (AMENDMENT) BILL

(as modified by the Select Committee)

Preamble.—Whereas it is expedient to further amend the Cochin Income-tax Act, VI of 1117, It is hereby enacted as follows.—

1. (1) *Short title, extent and commencement.*—This Act may be called the Cochin Income-tax (Amendment) Act, of 112 .

(2) It shall come into force on the first day of Chingam 1123.

2. *Amendment to section 3.*—In section 3 of the Cochin Income-tax Act, VI of 1117, hereinafter referred to as the Act:—

(*a*) After sub-section (3) the following sub-section shall be inserted, namely:—

"(3A) 'Capital Asset' means property of any kind (other than agricultural land) held by an assessee, whether or not connected with his business, profession or vocation, but does not include—

(*i*) any stock in trade, consumable stores or raw materials held for the purposes of his business, profession or vocation;

(*ii*) personal effects, that is to say, movable property (including wearing apparel, jewellery and furniture) held for personal use by the assessee or any member of his family dependant on him."

(*b*) for the explanation to sub-section (6) the following shall be substituted, namely:—

"Provided further that the expression 'accumulated profit', wherever it occurs in this clause, shall not include capital gains of any previous year, prior to the previous year for the assessment for the year, ending on the 31st day of Karkadagam 1123";

(*c*) In sub-section (7A).—

(1) The words "Marumakkathayam tarawad" shall be inserted between the words "Hindu undivided family" and "unregistered firm".

(2) Clause (c) shall be renumbered as clause (*d*) and before the said clause, as renumbered, the following shall be inserted, namely.—

"(c) which is chargeable under the head "Agricultural income" where the agriculture is carried on by the assessee".

(*d*) In sub-section (9) after the word and figures "Section 13", the words, figures and letter "and any Capital Gains chargeable according to the provisions of Section 13B" shall be inserted.

(*e*) After sub-section (10) the following shall be inserted, namely.—

"(10A) 'Landlord' means any person who receives rent for land either in cash or in kind from a tenant".

(*f*) In clause (19), for the words "does not apply; and" the words "does not apply and except any capital gain which is not includable in the total income of an assessee": shall be substituted.

3. *Amendment to section 4.*—In section 4 of the Act the words "company, local authority and the trustee or trustees of a religious or charitable institution" shall be substituted for the words "company and local authority".

LIBRARY ARCHIVES Kerala Legislative Assembly

4. *Amendment to section 5.*—In sub-section 3 of section 5 of the said Act.—

(*a*) For Clause (1) the following shall be substituted.—

"(1) Any income which is derived from property held under trust or other legal obligation for religious or charitable purposes and which is applied or finally set apart for application thereto according to the provisions governing the trust or other legal obligation:

Provided that if the income so set apart is not actually applied for the purpose for which it was set apart within two years from the end of the year in which it was so set apart or within such extended time as may be allowed by the Commissioner of Income-tax in any special case, it shall be included in the total income and taxed as the income of the year following the end of the period in which it was set apart to be spent".

(*b*) Clauses (*ii*), (*iii*), and (*viii*) shall be omitted.

(*c*) to clause (*v*) the words "and any capital gains of the Fund arising from the sale, exchange or transfer of such securities" shall be added.

(*d*) In clause (*vii*) after the words "any receipts" the words, figures and letter "not being capital gains chargeable according to the provisions of section 13B and" shall be inserted; and

(*e*) in the explanation occurring at the end of the sub-section the words and figures "clause (*ii*) or clause (*iii*) shall be deleted".

5. *Amendment to section 6.*—To clause (*c*) of section 6 of the said Act, the words "account not being taken in either case of income chargeable under the head capital gains" shall be added

6. *Amendment to section 9.*—In section 9 of the Act.—

(1) item (*v*) shall be renumbered as item (*vii*); and

(2) before item (*vii*) as renumbered the following shall be inserted, namely.—

"(*v*) Capital Gains.

(*vi*) Agricultural income."

7. *Insertion of new sections 13A and 13B.*—After section 13 of the said Act the following sections shall be inserted, namely.—

"13A. *Agricultural income.*—(1) The tax shall be payable by an assessee under the head "Agricultural income" in respect of agricultural income as defined in sub-section (1) of section 3.

(2) Such income shall be computed after making the following allowances, namely.—

(*a*) any sums paid on account of—

(*i*) Land Revenue, local rates and cesses and Municipal taxes in respect of the land from which the agricultural income is derived; and

(*ii*) any excise duty or tax as may be prescribed in respect of the agricultural produce from such land;

(*b*) any rent paid to the landlord or superior landlord, as the case may be, in respect of the land from which the agricultural income is derived;

(*c*) any expense incurred in respect of the maintenance of any irrigation or protective work or other capital asset constructed for the benefit of the land from which the agricultural income is derived;

Explanation.—"Maintenance" includes current repairs and includes also in the case of protective dykes and embankments, all such work as may be necessary from year to year for repairing any damage or destruction caused by flood, or other natural causes;

(*d*) in respect of depreciation of irrigation or protective works, buildings, machinery plant and furniture which are the property of the assesees and which are required for the purpose of deriving the agricultural income, a sum equivalent to such percentage on the written down value thereof as may in any cases of class of case be prescribed:

Provided that—

(*i*) the prescribed particulars have been duly furnished:

(*ii*) where full effect cannot be given to any such allowance in any year owing to there being no agricultural income in that year, or owing to the agricultural income being less than the allowance then, the allowance or part of the allowance to which effect has not been given, as the case may be, shall be added to the amount of the allowance for depreciation for the following year and deemed to be part of that allowance, or if there is no such allowance for that year, be deemed to be the allowance for that year, and so on for succeeding years; and

* * * *

(*e*) in respect of any machinery or plant used exclusively for agricultural purpose which has been sold or discarded, the amount by which the written down value of the machinery or plant exceeds the amount for which the machinery or plant is actually sold or its scrap value:

Provided that such amount is actually written off in the books of the assessee:

LIBRARY ARCHIVES Kerala Legislative Assembly

Provided further that where the amount for which any such machinery or plant is sold exceeds the written down value, the excess shall be deemed to be profits of the previous year in which the sale took place.

(*f*) interest paid on any amount borrowed and actually spent for the purpose of acquiring, reclaiming, imporving or cultivating the property from which such agricultural income is derived.

(*g*) where the land from which the agricultural income is derived is subject to a mortgage or other capital charge any interest paid in respect of such mortgage or charge;

(*h*) any expenditure (not being in the nature of capital expenditure or personal expenses of the assessee) laid out or expended wholly and excluisively for the purpose of deriving the agricultural income:

* * * *

(*i*) in the case of agricultural income under the head "Rent or revenue from land" referred to in clause (*a*) of sub-section (1) of section 3:—

I. A sum not exceeding such percentage as may be prescribed of the total amount of the rent in respect of the cost of collection of such rent or revenue including expenses of litigation;

II. When the rent derived is rent in kind the cost incurred by the assessee—

(*i*) in performing any process contemplated in item (*ii*) of clause (*b*) of sub-section (1) of section 3 for rendering the produce which comprises such rent in kind fit to be taken to market;

(*ii*) in transporting such produce to market;

(*iii*) in maintaining in good repair any agricutural implements or machinery an in providing for the up-keep of cattle for the purposes of such process or transport; and

(*iv*) in the purchase or replacement of cattle or implements which are necessary for such process or transport to such extent as may be prescribed, less the amount realised by sale of the cattle or implements replaced or their estimated value;

III. Any expenses incurred on repairs in respect of any capital asset used in connection with the collection of rents due in respect of the land from which the agricultural income is derived.

(*k*) In the case of agricultural income referred to in clause (*b*) of sub-section (1) of section 3;

I. The cost incurred.—

(*i*) in cultivating the land or raising livestock thereon ;

(*ii*) in performing any process contemplated in item (*ii*) of clause (*b*) of sub-section (1) of section 3 for rendering the produce of such land fit to be taken to market ;

(*iii*) in transporting such produce or livestock to market;

(*iv*) in maintaining agricultural implements and machinery in good repair and in providing for the upkeep of cattle for the purpose of such cultivation process or transport ; and

(*v*) in the purchase or replacement of cattle or implements which are necessary for such cultivation, process or transport to such extent as may be prescribed, less the amount realised by sale of the cattle or implements replaced or their estimated value ;

II. Any sum paid in order to effect an insurance against loss of, or damage to, crops or property from which the agricultural income is derived :

Provided that any amount received in respect of such insurance in any year shall be deemed to be agricultural income and shall be liable to be assessed under this section after deducting the portion thereof, if any, which has been assessed under section 13.

(3) No allowance shall be made in any case under this section on account of—

(*i*) any deduction which has already been made in the assessment under section 13;

(*ii*) any rent or interest chargeable, under this Act if it is payable without Cochin and tax has not been paid thereon, nor deducted therefrom under section 21 ; or

(*iii*) any payment which is chargeable under the head "Salaries" if it is payable without Cochin and tax has not been paid thereon nor deducted therefrom under section 21 ;

(*iv*) any payment by way of interest, salary, commission or remuneration made by a firm to any partner of the firm; or

(*v*) any payment to a provident or other fund established for the benefit of employees unless the employer has made effective arrangements to secure that tax shall be deducted at source from any payments made from the fund which are taxable under the head "Salaries".

LIBRARY ARCHIVES Kerala Legislative Assembly

Explanation.—For the purpose of this section "paid" means actually paid or incurred according to the method of accounting upon the basis of which agricultural income is computed under this section; "plant" includes vehicles and scientific apparatus purchased for the purpose of deriving the agricultural income; and "written down value" means—

(*i*) in the case of assets acquired in the previous year, the actual cost to the assessee; and

(*ii*) in the case of assets acquired before the previous year, the actual cost to the assessee less such sum as may be prescribed.

13-B. *Capital Gains.*—(1) The tax shall be payable by an assessee under the head "Capital Gains" in respect of any profits or gains arising from the sale, exchange or transfer of a capital asset effected after the 31st day of Karkadagam 1121; and such profits and gains shall be deemed to be income of the previous year in which the sale, exchange or transfer took place:

Provided that the tax shall not be payable by an assessee in respect of any profits or gains arising from the sale, exchange or transfer of a capital asset, which has been possessed by the assessee or the undivided Hindu family or Marumakkathayam Tarwad of which he was a member or a parent of his for not less than seven years before the date on which the sale, exchange or transfer took place; and the amount of such profits or gains shall not be included in his total income:

Provided further that any transfer of capital assets by reason of the compulsory acquisition thereof, under any law for the time being in force relating to the compulsory acquisition of property for public purposes or any distribution of capital assets on the total or partial partition of a Hindu undivided family or Marumakkathayam tarwad or on the dissolution of a firm or other association of persons, or on the liquidation of a company, or under a deed of gift, bequest, will or transfer on irrevocable trust shall not, for the purposes of this section, be treated as sale, exchange or transfer of the capital assets.

Provided further that the transfer of a capital asset by a company to a subsidiary company, the whole of the share capital of which is held by the parent company or by the nominees thereof, shall not be treated as a sale, exchange or transfer within the meaning of this section where the subsidiary company is resident in Cochin and is registered under the Indian Companies Act, 1913, as made applicable to Cochin, so however, that for the purposes of clause (*vi*) or clause (*vii*) of sub-section (2) of section 13, the cost or the written down value, as the case be, of the transferred capital asset shall be taken to be the same as it would have been if the parent company had continued to hold the capital asset for the purposes of its business.

(2) The amount of a capital gain shall be computed after making the following deductions from the full value of the consideration for which the sale, exchange or transfer of the capital asset is made, namely.—

(*i*) expenditure incurred solely in connection with such sale, exchange or transfer,

(*ii*) the actual cost to the assessee of the capital asset including any expenditure of a capital nature incurred and borne by him in making any additions or alterations thereto, but excluding any expenditure in respect of which any allowance in admissible under any provision of sections 11, 12, 13, 13A, and 14:

Provided that where a person who acquires a capital asset from the assessee, whether by sale, exchange or transfer, is a person with whom the assessee is directly or indirectly connected, and the Income-tax Officer has reason to believe that the sale, exchange or transfer was effected with the object of avoidance or reduction of the liability of the assessee under the section, the full value of the consideration for which the sale, exchange or transfer is made shall with the prior approval of the Commissioner of Income-tax, be taken to be the fair market value of the capital asset on the date on which the sale, exchange or transfer took place:

Provided further that where the capital asset is an asset in respect of which the assessee has obtained depreciation allowance in any year, the actual cost of the asset to the assessee shall be its written down value, as defined in section 13 or section 13A, increased or diminished, as the case may be, by any adjustment made under clause (*vii*) of sub-section (2) of section 13 or clause (*e*) of sub-section (2) of section 13A:

Provided further that where the capital asset was on any pervious occasion the subject of negotiations for its sale, exchange or transfer, any option or other money received and retained by the assessee in respect of such negotiations shall be deducted in computing the actual cost to him of such asset.

LIBRARY ARCHIVES Kerala Legislative Assembly

(3) Where any capital asset became the property of the assessee under any of the circumstances referred to in the second proviso to sub-section (*i*), its actual cost allowable to him for the purposes of this section shall be its actual cost to the previous owner thereof, and the provisions of sub-section (2) shall apply accordingly; and where the actual cost to the previous owner cannot be ascertained, the fair market value at the date on which the capital asset became the property of the previous owner shall be deemed to be the actual cost thereof.

(4) Notwithstanding anything contained in sub-section (1), where a capital gain arises from the sale, exchange or transfer of a capital asset which immediately before the date on which the sale, exchange or transfer took place was being used by the assessee for the purposes of his business, profession or vocation, or agriculture or which in the two years immediately preceding that date was being used by the assessee or his parent or by the undivided Hindu family or marumkkathayam tarwad of which he was a member mainly for the purposes of residence, and the assessee has within a period of one year before or after the date purchased a new capital asset for the same purposes of his business, profession or vocation or, as the case may be, for the purposes of his own residence, then instead of the capital gain being charged to tax as income of the previous year in which the sale, exchange or transfer took place, it shall, if the assessee so elects in writing before the assessment is made be dealt with in accordance with the following provisions of this sub-section, that is to say,—

(*a*) if the amount of the capital gain is greater than the cost of the new asset,—

(*i*) the difference between the amount of the capital gain and the cost of the new asset shall be charged under this section as income of the previous year, and

(*ii*) for the purposes of computing in respect of the new asset any allowance under clause (*vi*) or clause (*vii*) of sub-section (2) of section 13 or clause (*d*) or (*e*) of sub-section (2) of section 13A or the amount of any capital gain arising from its sale, exchange or transfer, the cost or the written down value, as the case may be, shall be nil, or

(*b*) if the amount of the capital gain is equal to or less than the cost of the new asset,—

(*i*) the capital gain shall not be charged under this section, and

(*ii*) for the purposes of computing in respect of the new asset any allowance under clause (*vi*) of sub-section (2) of section 13 or clause (*d*) of sub-section (2) of section 13A or any allowance or adjustment under clause (*vii*) of sub-section (2) of section 13 or clause (*e*) of sub-section (2) of section 13A or the amount of any capital gain arising from its sale, exchange or transfer the cost or the written down value, as the case may be, shall be reduced by the amount of the capital gain:

Provided that where in respect of the purchase of a new capital asset consisting of plant or machinery the assessee satisfies the Incometax Officer that despite the exercise of due diligence it has not been possible to make the purchase within the period specified in this sub-section the Income-tax Officer may, with the prior approval of the Commissioner of Income-tax, extend the said period to such date as he considers reasonable".

8. *Amendment to section 16.*—In section 16 of the said Act the words and figures "sections 13, 13A and 14" shall be substituted for the words and figures sections 13 and 14".

9. *Amendment of section 17.*—(*a*) In sub-section (2) of section 17 of the said Act as clause (c) between the words and figures "are assessable under and "section 52" the words, the figures and letter "section 13B or" shall be inserted; and

(*b*) the following shall be added as clause (*d*)—

"(*d*) in respect of income chargeable under the head 'agricultural income' Rs. 3,000 or in the case of a family or tarwad which is by law or custom impartible a sum of Rs. 250 for every member thereof subject to a minimum of Rs. 3,000 and a maximum of Rs. 25,000 for all the members together".

10. *Amendment of section 20.*—To section 20 of the said Act the following sub-sections shall be added—

"(6) Where the total income of an assessee, not being a company, includes any income chargeable under the head "Agricultural income", the tax including super-tax payable by him on his total income shall be—

(1) incometax and supertax payable on his total income as reduced by the amount of such inclusion, had such reduced income been his total income plus;

(2) income-tax on the whole amount of such inclusion at the following rates, namely,—

On the first Rs. 1,500 nil

LIBRARY ARCHIVES Kerala Legislative Assembly

On the next	Rs. 3,500	Six pies in the rupee.
,,	Rs. 5,000	One anna in the rupee.
,,	Rs. 5,000	One anna six pies in the rupee
,,	Rs. 5,000	Two annas in the rupee
,,	Rs. 5,000	Two annas six pies in the rupee
,,	Rs. 5,000	Three annas in the rupee
,,	Rs. 5,000	Three annas six pies in the rupee
,,	Rs. 10,000	Four annas in the rupee
,,	Rs. 25,000	Five annas in the rupee
,,	Rs. 30,000	Six annas in the rupee
,,	Rs. 50,000	Seven annas in the rupee
On the balance		Eight annas in the rupee

Provided that where owing to the fact that the amount of such inclusion has exceeded a certain limit income-tax thereon is payable at a higher rate, the amount of income-tax so payable shall be reduced so as not to exceed—

(*a*) the amount which would have been payable if the amount of such inclusion had not exceeded that limit, plus

(*b*) one half of the amount by which the amount of such inclusion exceeds that limit;

(7) Where the total income of a company includes any income chargeable under the head "Agricultural income" the super-tax payable by the company in any year shall be reduced by an amount computed on that part of its total income which consists of such inclusion at the rate of super-tax specified in Schedule III.

11. *Amendment to section 43.*—In section 43 of the said Act the following shall be substituted for clause (2), namely.—

"(2) on receipt of the record the Commissioner may make such inquiry or cause such inquiry to be made and notwithstanding the provisions contained in sections 41, 42 and 44 enhance or reduce any assessment or penalty or pass such other orders as he thinks fit:

Provided that he shall not enhance an assessment or a penalty or pass any other order prejudicial to the assessee without hearing him or giving him a reasonable opportunity of being heard:

Provided further that an order by the Commissioner declining to interfere shall be deemed not to be an order prejudicial to the assessee:

Provided further that the Commissioner shall not initiate any proceeding under this section after the expiration of one year from the date of the order sought to be revised.

12. *Amendment to section 48.*—To section 48 of the said Act the following sub-section shall be added, namely:—

"(4) require any dealer, broker or agent or any person concerned in the management of a stock or commodity Exchange to furnish a statement of the names and addresses of all persons to whom he or the Exchange has paid any sum in connection with the sale, exchange or transfer of a capital asset, or on whose behalf or from whom he or the Exchange has received any such sum, together with particulars of all such payments and receipts."

13. *Amendment to section 52.*—In section 52 of the said Act,—

(*a*) for the marginal heading the following shall be substituted, namely:—

"Income deemed to accrue or arise within Cochin";

(*b*) in sub-section (1) after the words "in cash or in kind" the words "or through or from the sale, exchange or transfer of a capital asset in Cochin" shall be inserted.

14. *Amendment to section 53.*—To section 53 of the said Act the following explanation shall be added, namely:—

"*Explanation.*—A person, whether residing in or out of Cochin, who acquires, after the 31st day of Karkadagam 1122, whether by sale, exchange or transfer, a capital asset in Cochin from a person residing out of Cochin shall, for the purposes of charging to tax the capital gain arising from such sale, exchange or transfer, be deemed to have a business connection, within the meaning of this section, with such person residing out of Cochin"

15. *Amendment to section 82.*—In clause (*d*) of section (1) of section 82 of the said Act, after the words "securities purchased therewith" the words "and of any Capital Gains arising from the sale, exchange or transfer of capital assets of the fund", shall be inserted.

LIBRARY ARCHIVES Kerala Legislative Assembly

16. *Amendment to section 97.*—In section 97 of the said Act, after the words "deposits of an approved superannuation fund" the words "and any capital gains arising from the sale, exchange or transfer of capital assets of such fund" shall be inserted.

17. *Amendment to section 103.*—In sub-section (1) of section 103 the words "the income of any person or class of persons" shall be substituted for the words "the income of any class of persons."

18. *Amendments to Schedule II and III.*—For the existing Schedules II and III of the Act the following shall be substituted.—

SCHEDULE II

See section 4

RATES OF INCOME-TAX

A. In the case of evey individual, Hindu undivided family, undivided marumakkathayam tarwad, trustee or trusetees of a religious or charitable institution, unregistered firm and other association of persons not being a case to which paragraph B of this schedule applies.—

		Rate
1. On of the first Rs. 1,500 of total income	..	Nil.
2. On of the next Rs. 3,500 of total income	..	Nine pies in the rupee.
3. On the next Rs. 5,000 of total income	..	1 anna 6 pies in the rupee.
4. On the next Rs. 5,000 of total income	..	2 annas 9 pies in the rupee.
5. On the balance of total income	..	4 annas in the rupee.

Provided that—

(*i*) no income-tax shall be payable on a total income which, before deduction of the allowance, if any, for earned income, does not exceed Rs.2,000;

(*ii*) the income-tax payable shall in no case exceed half the amount by which the total income (before deduction of the said allowance, if any, for earned income) exced Rs. 2,000;

(*iii*) the income-tax payable on the total income as reduceed by the allowance for earned income shall not exceed either—

(*a*) sum bearing to half the amount by which thh total income (before deduction of the allowance for earned income) exceeds Rs. 2,000 the same proportion as such reduced total income bears to the unreduced total income, or

(*b*) the income-tax payable on the income so reduced at the rates specified in this Schedule whichever is less.

B. In the case of every company and local authority, and in every case in which under the previsions of the Cochin Income-tax Act, VI of 1117, indome-tax is to be charged at the maximum rate.—

		Rate
On whole of total income	..	4 annas in the rupee

SCHEDULE III

(See section 77)

RATES OF SUPER-TAX

A. In the case of every individual, Hindu undivided marumakkathayam tarwad, trustee or trustees of a religious or charitable institution, unregistered firm and other association of persons, not being a case to which paragraphs B and C of this Schedule apply.—

		Rate
1. On the first Rs. 25,000 of total income	..	Nil
2. On the next Rs. 10,000 of total income	..	Two annas in the rupee
3. On the next Rs. 15,000 of total income	..	3 annas in the rupee
4. On the next Rs. 15,000 of total income	..	4 annas in the rupee
5. On the next Rs. 15,000 of total income	..	5 annas in the rupee
6. On the next Rs. 20,000 of total income	..	6 annas in the rupe
7. On the next Rs. 50,000 of total income	..	7 annas in the rupee

LIBRARY ARCHIVES Kerala Legislative Assembly

8. On the balance of total income	..	8 annas in in the rupee

* * * * * * *

B. In the case of every local authority.—

On the whole of total income	..	1 anna 6 pies in the rupee

C. In the case of an association of persons being a Co-operative Society, for the time being registered under the Co-operative Societies Act, XXVI of 1113.—

1. On the first Rs. 25,000 of total income	..	Nil
2. On the balance of total income	..	One anna six pies in the rupee

D. In the case of every company.—

On the whole of total income	..	One anna 6 pies in the rupee

APPENDIX XII

THE COCHIN CRIMINAL LAW AMENDMENT BILL

Preamble.—WHEREAS for the maintenance of public safety and to prevent and put down disorders involving menace to the peace and tranquillity of the State, it is considered necessary to provide for the prohibition of certain associations and for the control of the printing, publication, etc., of certain prejudicial matters; It is hereby enacted as follows.—

Short title, extent and commencement.—1. (1) This Act may be called the Cochin Criminal Law Amendment Act, of 112.

(2) It extends to the whole of Cochin State.

(3) It shall come into force at once.

2. In this Act—

Definitions.—(1) "association" means any combination or body of persons, whether the same be known by any distinctive name or not; and

(2) "unlawful association" means an association—

(*a*) which encourages or aids persons to commit acts of violence or intimidation or of which the members habitually commit such acts, or

(*b*) which has been declared to be unlawful by Government under the powers hereby conferred.

3. *Power to declare association unlawful.*—If Government are of opinion that any association interferes or has for its object interference with the administration of the law or with the maintenance of law and order, or that it constitutes a danger to the public peace, Government may, by notification in the Cochin Government Gazette, declare such association to be unlawful.

4. *Penalties.*—(1) Whoever is a member of an unlawful association, or takes part in meetings of any such association, or contributes or receives or solicits any contribution for the purpose of any such association, or in any way assists the operations of any such association, shall be punished with imprisonment for a term which may extend to six months, or with fine, or with both.

(2) Whoever manages or assists in the management of an unlawful association, or assists in promoting a meeting of any such association, or of any members thereof as such members, shall be punished with imprisonment for a tern which may extend to three years, or with fine, or with both.

(3) An offence under-sub-section (1) shall be cognizable by the Police and notwithstanding anything contained in the Code of Criminal Procedure, II of 1086, shall be non-bailable.

5. *Power to notify and take possession of places used for the purposes of an unlawful association.*—(1) Government may, by notification in the Cochin Government Gazette, notify any place which in their opinion is used for the purposes of an unlawful association.

Explanation.—For the purposes of this section "place" includes a house or building, or part thereof, or a tent or vessel.

(2) The District Magistrate or any officer authorised by him in this behalf in writing may thereupon take possession of the notified place and evict therefrom any person found therein, and shall forthwith make a report of the taking possession to Government.

LIBRARY ARCHIVES Kerala Legislative Assembly